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July 31, 2001

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**JUL 31 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

**VIA HAND DELIVERY**

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, TW-A325  
Washington, DC 20554

**Re: CC Docket No. 01-140; Bell Atlantic Telephone Cos. Tariff Nos. 1 and 11;  
Oppositions to Direct Case**

Dear Ms. Salas:

Pursuant to the Order Designating Issues for Investigation in the above referenced docket, and through their undersigned counsel, the Association for Local Telecommunications Services, Allegiance Telecom, Inc., Covad Communications Company, Focal Communications, Inc., Network Plus, Inc. and XO Communications, Inc. hereby file with the Commission the enclosed Oppositions to Direct Case.

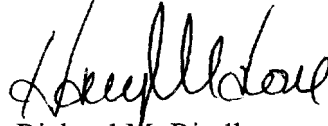
As required by paragraph 73 of the Designation Order, an original and four (4) copies of this filing are being filed with the Secretary's Office, and one (1) copy of this filing is being delivered to the Commission's copy contractor, International Transcription Service, Inc. Additionally, three (3) copies of this filing are being served simultaneously upon Paul Moon of the Competitive Pricing Division. A copy of this filing also is being served today upon Verizon via facsimile and overnight mail. A certificate of service is attached to the enclosed Oppositions.

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LEAD CODE

Ms. Magalie Roman Salas, Esq.  
Federal Communications Commission  
July 31, 2001  
Page 2

Please direct any questions regarding these Oppositions to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard M. Rindler".

Richard M. Rindler  
Kathleen L. Greenan  
Harry N. Malone

Counsel for:

Association for Local Telecommunications  
Services  
Allegiance Telecom, Inc.  
Covad Communications Company  
Focal Communications, Inc.  
Network Plus, Inc.  
XO Communications, Inc.

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Lisa Korner, Network Plus  
Rick Hicks, XO Communications

**ORIGINAL**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**JUL 31 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of	)	CC Docket No. 01-140
	)	
Bell Atlantic Telephone Companies	)	Transmittal Nos. 1373 and 1374
Tariff F.C.C. Nos. 1 and 11	)	
	)	
Verizon Telephone Companies	)	Transmittal Nos. 23 and 24
Tariff F.C.C. Nos. 1 and 11	)	

**OPPOSITIONS TO DIRECT CASE**

**The Association for Local  
Telecommunications Services  
Allegiance Telecom, Inc.  
Covad Communications Company  
Focal Communications, Inc.  
Network Plus, Inc.  
XO Communications, Inc.**

Dated: July 31, 2001

## SUMMARY

Verizon's Direct Case is largely nonresponsive to the Bureau's requests for the information necessary to determine if Verizon's proposed rates and terms for Tariff F.C.C. Nos. 1 and 11 are just and reasonable. Verizon originally offered three primary reasons to support its enormous rate increases – (1) the impact of inflation, (2) the inaccuracy of previous cost studies and (3) changes in rate application. Verizon has abandoned its inflation argument, conceded it could not support its assertion concerning inaccuracies in the prior cost studies and has failed to demonstrate the effect of changes in rate application. Verizon now states that the Bureau should ignore these failures and instead limit itself to an evaluation of rates on the basis of a more recent cost study without reference to factors outside the study. Having attempted to limit the scope of the Bureau's review, Verizon fails to provide the necessary supporting documentation for that study, even though it is now six weeks since this supporting information was requested.

Verizon has also failed to establish that its federal space preparation charges, which are significantly higher than its rates in many states, do not recover costs associated with DC power. In addition, it has failed to justify many of its cost and utilization factors, nor has it justified its proposed certification program. The Bureau must conclude that Verizon has not met its burden of proof. It is now even clearer that there never was a logical basis for these rate increases and tariff revisions and they should be rejected.

In the event that the Bureau nonetheless permits the rate increases and revisions to take effect, existing collocators should be placed on the same footing as they would have been if they had originally ordered under the less expensive state tariffs. Consequently, the Bureau should require Verizon to either grandfather the DC power arrangements of current collocators or direct

Verizon to refund 75% of the original space preparation charges that it imposed on those collocators.

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	CC Docket No. 01-140
	)	
Bell Atlantic Telephone Companies	)	Transmittal Nos. 1373 and 1374
Tariff F.C.C. Nos. 1 and 11	)	
	)	
Verizon Telephone Companies	)	Transmittal Nos. 23 and 24
Tariff F.C.C. Nos. 1 and 11	)	

**OPPOSITIONS TO DIRECT CASE**

The Association for Local Telecommunications Services (“ALTS”), Allegiance Telecom, Inc. (“Allegiance”), Choice One Communications, Inc. (“Choice One”), Covad Communications Company (“Covad”), Focal Communications, Inc. (“Focal”), Network Plus, Inc. (“Network Plus”), and XO Communications, Inc. (“XO”)(together “CLECs”), by their undersigned counsel, hereby oppose the Verizon Direct Case filed on July 17, 2001 in the above captioned proceeding.

On April 11, 2001 and April 12, 2001, the former Bell Atlantic Telephone Companies filed with the Federal Communications Commission (“Commission”) Transmittal Nos. 1373 and 1374, respectively, to substantially increase monthly rates for DC power for physical and virtual expanded interconnection arrangements in its Tariff FCC Nos. 1 and 11.<sup>1</sup> On April 18, 2001, a number of CLECs filed a petition to reject or suspend and investigate the proposed tariff

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<sup>1</sup> Bell Atlantic Tel. Cos. Transmittal No. 1373 of Tariff FCC Nos. 1 and 11 (Apr. 11, 2001); Bell Atlantic Tel. Cos. Transmittal No. 1374 of Tariff FCC Nos. 1 and 11 (Apr. 12, 2001)(together, “Transmittal 1373”).



revisions.<sup>2</sup> They argued, among other things, that the Common Carrier Bureau (“Bureau”) should reject the new monthly rates because Verizon had not justified the huge proposed increases in those rates, nor had it established that it was not double-recovering its costs for DC power in its high space preparation costs. Verizon submitted its Reply on April 24, 2001.<sup>3</sup>

The Bureau responded by suspending the tariffs for one day, and setting them for investigation.<sup>4</sup> The Bureau designated 12 issues for investigation and directed Verizon to provide numerous items of information and perform certain comparative analyses to support Verizon’s overall contention that its new higher rates were reasonable in light of its past, lower rates.

## **I. INTRODUCTION**

The CLECs applaud the Bureau’s action requiring Verizon to support its rate increases. As demonstrated by Transmittal 1373 (and further proven by its Direct Case), Verizon’s rate increases in fact are not supported and are arbitrarily set to create a windfall for Verizon.

Verizon’s Direct Case is a nonresponsive “placeholder” in which Verizon purports to justify its rates without providing the required support. Contrary to its assertion that it “has provided extensive supporting information,”<sup>5</sup> Verizon has been nonresponsive in all substantial

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<sup>2</sup> *Petition to Reject or Suspend and Investigate* of Association for Local Telecomms Servs. *et al.* (Apr. 18, 2001)(“*Petition*”). In addition, Petitions were filed by Conversent Communications, Sprint Corp., Qwest Communications International, Inc. and Qwest Communications Corporation, WorldCom, Inc. and AT&T Corp.

<sup>3</sup> Reply of Verizon Tel. Cos. to the *Petition of Association of Local Telecomms. Servs.* (Apr. 24, 2001)(“*Reply*”).

<sup>4</sup> Bell Atlantic Tel. Cos. Revisions in Tariff FCC Nos. 1 and 11, *Order Designating Issues for Investigation*, CC Docket No. 01-140 (rel. June 26, 2001).

<sup>5</sup> *Direct Case* Exhibit A at 3.

respects. In fact, Verizon has failed to support any of the three primary reasons it gave for why it quadrupled its rates in FCC 11 and also increased its rates in FCC 1:

- 1) Verizon has failed to come forward with any evidence that the cost inputs, including power equipment prices, have increased as a result of inflation;
- 2) Verizon has conceded that it cannot provide support for its assertion that its previous cost studies grossly underestimated its costs; and
- 3) Verizon has ignored the Bureau's request and failed to provide support for its assertion that previous power costs were derived on a "per-fused amp" rather than the current "per-load amp" basis.

With its original justification in tatters, Verizon has attempted to restrict the Bureau's investigation to an analysis of Verizon's latest cost study, conducted in a vacuum without reference to its previous cost studies and without important supporting data. Verizon has failed to respond to the following issues:

<b>Designated Issue</b>	<b>Verizon Response</b>
Historical Prices <sup>6</sup>	Supporting data is not available. <sup>7</sup>
Current Prices <sup>8</sup>	Verizon has promised descriptions of sub-components "at a later date." <sup>9</sup>
EF&I Factor <sup>10</sup>	Supporting data "will be provided." <sup>11</sup>

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<sup>6</sup> *Designation Order* para. 17.

<sup>7</sup> *Direct Case* Exhibit B at 1.

<sup>8</sup> *Designation Order* para. 21.

<sup>9</sup> *Direct Case* Exhibit A at 1.

<sup>10</sup> *Designation Order* para. 31.

<sup>11</sup> *Direct Case* Exhibit D at 1.

EF&I Factor <sup>12</sup>	No cost support data for state decisions
Building and Land Factors <sup>13</sup>	No cost support for FCC 1 and 11 space preparation charges.
Comparison to Previous Cost Studies <sup>14</sup>	Verizon cannot reconstruct these studies. <sup>15</sup>
Recalculation of EF&I Factors <sup>16</sup>	Verizon provided part of these recalculations in a late-filed letter. <sup>17</sup> However, they were still meaningless without the required supporting data. <sup>18</sup>
Building and Land Factors <sup>19</sup>	No alternative methodology results provided.
Depreciation ACF <sup>20</sup>	Verizon completely ignored directive to employ alternative methodologies.
Cumulative Analysis <sup>21</sup>	Verizon completely ignored directive to perform a cumulative analysis.

The Bureau should note that, with the exception of part of the EF&I recalculations requested by the Bureau, Verizon has submitted no further data as of the date of this filing (now six weeks since the date of the Designation Order). If Verizon, given six weeks, cannot produce

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<sup>12</sup> *Designation Order* para. 36.

<sup>13</sup> *Designation Order* para. 37.

<sup>14</sup> *Designation Order* para. 24.

<sup>15</sup> *Direct Case* Exhibit B at 1.

<sup>16</sup> *Designation Order* paras. 32 - 34.

<sup>17</sup> Letter from Joseph DiBella, Attorney for Verizon, to Magalie Roman Salas, Secretary of the Commission (July 27, 2001)(“*DiBella Letter*”).

<sup>18</sup> *Designation Order* para. 31.

<sup>19</sup> *Designation Order* para. 41.

<sup>20</sup> *Designation Order* para. 50.

<sup>21</sup> *Designation Order* para. 58.

the information on which its rates were supposedly justified four months ago, the Bureau may properly determine that there never was any supportable basis for the rates it filed in April. The Bureau is left with no option but to conclude that Verizon has quadrupled its rates for DC power with no justification other than the desire to reap a windfall.

## **II. THE BUREAU SHOULD REJECT TRANSMITTAL 1373 BECAUSE VERIZON HAS FAILED TO SUPPORT ITS RATE INCREASES**

### **A. Verizon Has Failed to Support its Contention That Rates Have Increased as a Result of Inflation.**

The Bureau directed Verizon to justify its claim that its rate increases were based, in part, on inflation. The Bureau also directed Verizon to provide a time series for the period 1993 to 2000 of nominal annual material prices for a number of power equipment items.<sup>22</sup> Rather than providing support for this claim, Verizon has conceded that it cannot support its contention that its rate increases are due to increases in the prices of power equipment since 1993. “Because of the unavailability of the data sought by the Bureau, Verizon will not attempt to justify the reasonableness of its proposed power rates on the basis of inflation between 1993, when the original cost studies were prepared for expanded interconnection power rates, and the current period.”<sup>23</sup> Translation: Verizon had hoped to foist a boilerplate explanation on the Commission (see also “merger efficiencies,” section IV, *infra*) and has been caught.

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<sup>22</sup> *Designation Order* para. 18.

<sup>23</sup> *Direct Case* Exhibit A at 3.

**B. Verizon Has Failed to Show That its Previous Cost Studies Were Inaccurate.**

To test Verizon's claim that the huge rate increases are justified because its earlier studies underestimated its costs, the Bureau directed Verizon to provide a detailed analysis of inputs and associated costs that were underestimated or omitted from its 1993 and 1996 cost studies, and to detail those inputs and associated costs that it determines were overestimated in its 1993 and 1996 cost studies.<sup>24</sup> Verizon has been totally nonresponsive to this directive, citing the "age and incompleteness" of the studies and its inability to "reconstruct property records . . . [or] determine the actual engineering, furnishing, and installation factors for power equipment."<sup>25</sup> This inability to produce supporting data for its earlier cost studies stands in sharp contrast to Verizon's bald assertion that its previous cost studies "grossly underestimated the costs of providing collocation."<sup>26</sup> "Losing" the previous studies is consistent with Verizon's pattern of depriving the FCC of a context in which to evaluate Verizon's rates. Instead of offering a historical perspective, Verizon seeks to restrict the FCC to data selected to support a predetermined result.

**C. Verizon Has Failed to Provide Support for Its Implied Assertion That Previous Power Costs Were Derived on a "Per-Fused Amp" Rather than the Current "Per-Load Amp" Basis.**

Verizon claims that its proposed rates do not result in increased charges overall because it no longer charges on a per-fused amp (and instead charges on per-load amp basis), thus decreasing the total number of amps for which a collocated competitor will be charged each

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<sup>24</sup> *Designation Order* para 24.

<sup>25</sup> *Direct Case* Exhibit B at 1.

month.<sup>27</sup> To investigate this claim, the Bureau directed Verizon to demonstrate that its previously tariffed DC power rates were based upon cost studies that assessed power costs on a per-fused amp basis and that it charges its customers on a per-fused amp basis.<sup>28</sup>

Verizon ignored the Bureau's directive and came forward with no such evidence. In fact, Verizon has good reason not to produce its prior cost studies. The issue of whether Verizon's rates are based on fused amps or load amps has been a contentious one throughout Verizon's region, with Verizon arguing that it should charge for fused amps, while the CLECs have established in numerous forums that Verizon's tariffs provide that DC power is charged on a load amp basis, and a load amp basis only.<sup>29</sup> The CLECs unequivocally maintain that Verizon has consistently violated its tariffs and unilaterally charged on a per-fused amp basis, resulting in tens of millions of dollars in overcharges to CLECs across its region.<sup>30</sup>

In the face of these complaints, Verizon has filed tariff revisions at the state and federal level in which it changed its rate application to properly reflect charging on a "per-load amp" basis.<sup>31</sup> But with Transmittal 1373, it has also cynically inflated its "per-load amp" rates so that

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<sup>26</sup> Reply at 3-4.

<sup>27</sup> Reply at 1.

<sup>28</sup> *Designation Order* para. 26.

<sup>29</sup> See Investigation of Rates and Charges of Verizon; Ma. D.T.E. 98-57 Phase IV; Joint Complaint of Covad Comms. Co. and AT&T Comms. of N.Y., N.Y.P.S.C. Case No. 00-C-2049; Covad Comms. Co. v. Verizon Pennsylvania, Inc., Pa. P.U.C. Docket No. C-00015419; Application of Verizon Virginia Inc. for Approval of its Network Service Interconnection Tariff, Va. S.C.C. Case No. PUC990101.

<sup>30</sup> NOTE: Network Plus does not sponsor this sentence.

<sup>31</sup> See, e.g. Transmittal No. 1373 of Verizon Tariff FCC Nos. 1 and 11 (Apr. 11, 2001); Revisions to Verizon – MA Tariff Ma. D.T.E. No. 17 (Jan. 12, 2001); Revisions to Verizon – NY Tariff N.Y.P.S.C. 8 (Mar. 27, 2001).

it can maintain its total revenues at the same level and continue to reap an unjust and anticompetitive windfall.<sup>32</sup>

The Bureau must not let Verizon confuse the issue of its unreasonable rates with the issue of its unreasonable billing practices. Revising its rates to apply on a “per-load amp” basis is not a magnanimous gesture or even a concession – Verizon is merely eliminating an unlawful billing practice that is otherwise unrelated to this proceeding. The Bureau should evaluate the reasonableness of Verizon’s newly proposed rates on their own merits, and not in conjunction with a contrived scheme in which Verizon gives with one hand and takes with the other.

**D. Verizon’s Direct Case Does Not Respond to the Bureau’s Demand for Cost Data.**

**1. Current Prices**

The Bureau directed Verizon to provide a detailed description of the precise functionality of each general type of hardware and plug-in item used to calculate the total material investment estimate, and to explain precisely how each such item is required for the provision of DC power to collocation arrangements.<sup>33</sup> Verizon has been nonresponsive to this directive, stating that it will provide descriptions of sub-components at a later date.<sup>34</sup> Thus, while Verizon has produced

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<sup>32</sup> As if this were not enough, Verizon has recently hatched yet another potentially costly scheme, described *infra* section IX, to further inflate its revenues at the expense of its competitors. Specifically, Verizon seeks to “mix and match” tariff provisions to inappropriately recover collocation revenues.

<sup>33</sup> *Designation Order* para. 21.

<sup>34</sup> *Direct Case* Exhibit A at 1.

extensive data establishing *what* the individual items cost,<sup>35</sup> it has failed to address the Bureau's stated need to understand *why* those items are necessary to providing DC power. Without this context, the Bureau may be able to determine that the cost for an item is reasonable, but not whether it is reasonable to charge for it or even include it in the cost calculations at all.

## **2. Engineering, Furnished and Installed Factor**

### **a. Federal EF&I Methodology**

For each specific ordered and completed power equipment installation job used to calculate its federal EF&I factor, the Bureau directed Verizon to provide: (1) a brief narrative describing the purpose of the job and how it relates to the provision of DC power; and (2) bill(s) for the job including the actual costs incurred by Verizon for completing it.<sup>36</sup> Verizon has been nonresponsive to this directive, promising that the data used to derive "in-place cost" estimates will be provide at some unspecified later date.<sup>37</sup> Instead, Verizon has merely provided page after page of installed material lists for each state. Curiously, these lists are sorted not by CLLI code, but by item description!<sup>38</sup> So, rather than providing information that would have at least offered some insight into the investment for each central office, Verizon has presented the Bureau with a very long list that, at best, provides a meaningless total of the cost of installed material in an entire state. Set at 2.7852, Verizon's EF&I factor is by far the greatest inflator of its power rates. Of all the cost factors that the Bureau is investigating, this is one that deserves the closest

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<sup>35</sup> *Direct Case Attachment 2.*

<sup>36</sup> *Designation Order* para. 31.

<sup>37</sup> *Direct Case Exhibit D* at 1.



scrutiny. Without the proper cost support, Verizon has not proven that its rates are just and reasonable and the Bureau must reject the proposed rates.

**b. State EF&I Methodology**

To the extent that Verizon seeks to justify its federal EF&I factor by reference to state approved EF&I factors, the Bureau directed Verizon to provide all relevant state decisions *and all cost support adduced in those proceedings*.<sup>39</sup> Verizon has provided copies of the state decisions supporting its state EF&I factors, but it has been wholly nonresponsive in providing the accompanying cost models as the Bureau directed. Apparently, Verizon expects the Bureau to simply accept the decisions of state regulators, without examining the supporting documentation.<sup>40</sup> This position directly contradicts Verizon's earlier statement that "expanded interconnection services . . . cannot be judged by the same rules that apply to collocation in state proceedings . . ." <sup>41</sup> This is another example of Verizon's "mix and match" hypocrisy.<sup>42</sup> When the CLECs want to take advantage of low state rates, Verizon seeks refuge behind jurisdictional arguments. However, when it is Verizon that wants to take advantage of high state rates, the jurisdictional issues disappear and the Bureau is supposed to march in lock-step with state regulators.

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<sup>38</sup> In its late filed EF&I recalculations, the data are sorted by CLLI code, but not subtotaled by office or state.

<sup>39</sup> *Designation Order* para 36.

<sup>40</sup> *Direct Case* at 3.

<sup>41</sup> Reply at 3.

<sup>42</sup> See CLEC Petition at 8. (" . . . Verizon explicitly prohibited carriers from "mixing and matching" -- paying the lower nonrecurring rate from the state tariff and the lower recurring rate from the FCC 11 tariff. Now, Verizon is trying to play the "mix and match" game in its own

Verizon must justify its federal rates to the satisfaction of the FCC, not the state commissions. The Designation Order was clear that the Bureau could only find the conclusions of state regulators persuasive to the extent that it has access to all of the information that the state regulators had.

**E. Verizon's Direct Case is Nonresponsive to the Bureau's Requirement for Comparative Analysis.**

Verizon assiduously refuses to engage in comparisons and explore alternatives. This stance appears intended to deprive the FCC of any context within which to evaluate the reasonableness of Verizon's proposed rates. The Bureau should not sanction Verizon's high-handed position.

**1. Comparison to Previous Cost Studies**

As described in sub-sections A, B and C, *supra*, Verizon has failed to provide support for its assertions that its previous cost studies were inaccurate, that its rates have increased as a result of inflation and that previous power costs were derived on a "per-fused amp" rather than the current "per-load amp" basis.

**2. Alternative Methodologies**

**c. Recalculation of EF&I Factors**

The Bureau directed Verizon to recalculate its EF&I factor in three ways: (1) by ignoring any costs related to central offices without collocation arrangements, (2) by including only the

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favor with Transmittal 1373 – Verizon is requiring carriers to pay the higher nonrecurring FCC 11 rate *and* the higher recurring rate comparable to the state rate.”)

costs of certain specified hardware items and (3) by combining the first two methods.<sup>43</sup> Verizon performed the first recalculation,<sup>44</sup> which deleted central offices without collocation arrangements, but completely ignored the directive in regard to the rest of the calculations specified by the Bureau. It is also curious that the only subsequent information that Verizon has chosen to provide is information that improves its argument by demonstrating a higher EF&I factor of 2.8180.

**d. Building and Land Investment**

The Bureau directed Verizon to calculate its Building and Land Investment factors according to formulas prepared by the Bureau.<sup>45</sup> Rather than perform these calculations for even a single representative office, Verizon assured the Bureau that it would “endeavor to develop the bureau’s [sic] alternative methodology in a subsequent filing.”<sup>46</sup> Verizon has submitted no such filing.

**e. Switching Depreciation**

The Bureau directed Verizon to recalculate its Switching Depreciation ACF using two alternative methodologies provided by the Bureau.<sup>47</sup> Verizon has been completely nonresponsive to this request, as well as evasive, asserting that “it would be inappropriate to use depreciation lives that do not match the depreciation lives for the group in which the power

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<sup>43</sup> *Designation Order* paras. 32-34.

<sup>44</sup> *DiBella Letter* at 2.

<sup>45</sup> *Designation Order* para. 41.

<sup>46</sup> *Direct Case Exhibit E* at 3.

<sup>47</sup> *Designation Order* para. 50.

equipment is classified in the company's books."<sup>48</sup> However, the "appropriateness" of particular depreciation lives is precisely the issue that the FCC is attempting to resolve by ordering alternative methodologies. It is illogical to depreciate power equipment at the same rate as switching, and the Bureau's rules indicate that this is inappropriate as well.<sup>49</sup> Again, Verizon is attempting to deprive the FCC of the tools that it needs to evaluate the reasonableness of the proposed increased charges.

### 3. Cumulative Analysis

The Bureau directed Verizon to conduct an analysis combining the alternate methodologies that the Bureau identified.<sup>50</sup> Verizon has ignored this directive as well and has been completely nonresponsive.

### III. VERIZON HAS FAILED TO ESTABLISH THAT ITS SPACE PREPARATION CHARGES IN FCC TARIFFS 1 AND 11 DO NOT DOUBLE RECOVER ITS DC POWER CHARGES. IT SHOULD BE DIRECTED TO RECALCULATE THOSE CHARGES AND ISSUE REFUNDS.

Verizon asserts that Telesector Resources Group Transmittal No. 165, Description and Justification page 12 substantiates its claim that no DC power costs are recovered by the space preparation charges in its Tariff F.C.C. 11.<sup>51</sup> However, this transmittal actually *states the opposite*. "These nonrecurring costs include design, engineering of the space and installation of

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<sup>48</sup> *Direct Case* Exhibit G at 1.

<sup>49</sup> *See infra* section V.

<sup>50</sup> *Designation Order* para. 57

<sup>51</sup> *Direct Case* Exhibit E at 2.

cable racks, cabinets, caging, lighting *and power equipment.*"<sup>52</sup> It makes sense that power equipment would be included in this rate, considering that the rate in Transmittal No. 165 was extremely high -- \$54,900 per central office.<sup>53</sup>

Even if Verizon could demonstrate that no power costs are recovered in its FCC 1 and 11 space preparation charges, it would then have to explain why the federal rates are so much higher than its state rates. In Transmittal 165, Verizon explained that its space preparation NRCs were originally based on a statistical sampling of 12 state space preparation charges, which at that time averaged \$54,900.<sup>54</sup> Verizon has never provided any other justification for those rates. However, while state space preparation charges in the area covered by FCC 11 have declined significantly, to an average of less than \$13,500,<sup>55</sup> the federal charges have remained, without justification, at the original level. Verizon has a continuing obligation under section 201(b) of

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<sup>52</sup> *Direct Case*, Attachment 5, Telesector Resources Group Transmittal No. 165, Description and Justification p. 12 (emphasis supplied)("D&J")

<sup>53</sup> D&J p. 16.

<sup>54</sup> D&J p. 12.

<sup>55</sup>

STATE	TARIFF	SECTION	RATE
Maine	PUC ME No. 20	M.5.2.2	\$15,618.00
Massachusetts	DTE MA No. 17	M.5.2.2	\$15,002.00
New Hampshire	NHPUC No. 84	M.5.2.2	\$15,621.00
New York	PSC NY No. 8	35.15.2	\$3,436.00
Rhode Island	PUC RI No. 18	M.5.2.2	\$16,139.00
Vermont	PSB VT No. 22	M.5.2.2	\$14,786.00
<b>AVERAGE</b>			<b>\$13,433.67</b>

the Communications Act<sup>56</sup> to ensure that its rates are just and reasonable. If Verizon's FCC 11 space preparation charges are based on state rates, Verizon should have readjusted its federal space preparation rates, but it did not. It should now be ordered to reduce its space preparation rates and issue refunds accordingly.

**IV. VERIZON'S COST FACTOR CALCULATIONS DO NOT DEMONSTRATE ANY OF THE PROMISED EFFICIENCIES FROM ITS MERGERS WITH NYNEX AND GTE.**

In the eight years since Bell Atlantic and NYNEX, Verizon's predecessors, first set the rates in FCC 1 and 11, they have merged with each other as well as GTE and have assured the Commission that the efficiencies realized from the combined companies would reduce costs and contribute to the public interest.<sup>57</sup> However, just the opposite has occurred. Verizon has proposed rate increases ranging from 16% in the old Bell Atlantic states to 293% in the NYNEX areas. In addition, it seeks to spread the use of the very high EF&I factor inherited from Bell Atlantic throughout the Verizon footprint.<sup>58</sup>

**V. VERIZON HAS FAILED TO JUSTIFY ITS SWITCHING DEPRECIATION ANNUAL COST FACTOR AND HAS MISINTERPRETED THE COMMISSION'S RULES IN THIS REGARD**

Verizon has argued that power equipment is "associated equipment" which is "appropriate" to group with switching equipment for depreciation purposes.<sup>59</sup> Verizon has

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<sup>56</sup> 47 U.S.C. 201(b).

<sup>57</sup> See Applications of NYNEX Corp. and Bell Atlantic Corp., File No. NSD-L-96-10, Applicants' June 23, 1997 Comments at 2 para. 3; Applications of GTE Corp. and Bell Atl. Corp., CC Docket 98-184, Oct. 2, 1998 Application, Att. A at 22.

<sup>58</sup> *Direct Case* Exhibit D at 1.

<sup>59</sup> *Direct Case* Exhibit G at 1.

misread the definition of “associated equipment” and turned it on its head. Far from being merely “associated equipment,” power equipment is considered by the FCC to be a separate category of plant in its own right, comparable to switching, with its own “associated equipment.”

Associated equipment means that equipment which functions with a specific type of plant or with two (2) or more types of plant, e.g., switching equipment, *network power equipment*, circuit equipment, common channel network signaling equipment or network operations equipment. Associated equipment shall be classified to the account appropriate for the type of equipment with which it is predominately used rather than on its own characteristics.<sup>60</sup>

True “associated equipment” consists of ancillary items like cable racking, framing, relay racks and panels -- not entire systems like power generation plants.<sup>61</sup> If Verizon were really interested in doing what is “appropriate” and adhering to the letter and spirit of the Bureau’s accounting rules, it would create a separate account for power equipment and apply a group depreciation rate that is more appropriate to the life expectancy of power equipment. Judging by the estimates provided by Verizon,<sup>62</sup> this group depreciation life would be more on the order of 20 to 30 years – not the 16 years it apparently has used in its cost study.

Assuming that Verizon were justified in moving power equipment into the switching group, and considering that the lives of power equipment items are all more than 16 years (some substantially more), the average life of the group should have increased, and therefore the group depreciation rate should have increased as well. Verizon cannot be allowed to dump long-life

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<sup>60</sup> 47 C.F.R. 32.9000 (emphasis supplied).

<sup>61</sup> “Illustrative examples of associated equipment are: Alarm and signal apparatus[, a]uxiliary framing[, c]able and cable racks[, d]istributing frames and equipment thereon[, f]rame and aisle lighting equipment (not permanently attached to the building)[, relay racks and panels[.]” *Id.*

<sup>62</sup> *Direct Case Exhibit G* at 2.

items into a short-life group without recalculating and raising the depreciation life for that entire group.

The Bureau specifically directed Verizon to create a separate cost study group for power equipment<sup>63</sup> and Verizon ignored this directive. Not only has Verizon failed to justify its depreciation ACF, it has twisted the Bureau's rules to create an argument that it is "inappropriate" to do so. The Bureau should hold that Verizon has been nonresponsive in addressing this issue.

**VI. VERIZON HAS FAILED TO EXPLAIN THE SOURCE OR THE DC POWER "UTILIZATION" FACTOR.**

On page 2 of the Workpaper for each individual state, Verizon has listed on Line 4 a "Utilization Factor" of 1.0000.<sup>64</sup> This particular utilization factor is unusual, since a typical utilization factor is less than 100%. Moreover, a high utilization factor usually indicates an efficient use of the investment in material and tends to benefit the purchaser of the service that an item supports. The opposite holds true in this case, since the effect of the Line 4 Utilization Factor is to pass-through all of the Installed Investment on Line 3 to the Total In-Place Investment on Line 5. The source of this factor is "Engineering," but the CLECs have been unable to find any other support for it, despite a thorough review of Verizon's documentation. Nevertheless, the CLECs have attempted to reconcile this factor with the data that Verizon has provided.

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<sup>63</sup> *Designation Order* para. 50.

<sup>64</sup> *See, e.g. Direct Case Attachment 2, Tab A, Sub-tab 2, Workpaper 1, p. 2 of 3.*



Initially, the CLECs considered that this factor might be a ratio of the anticipated demand for load amps<sup>65</sup> to the total fused amperage in the region.<sup>66</sup> However, using these figures results in a factor of .0729. While the CLECs would be very happy to see Verizon use this factor, it is unlikely that this is what Verizon had in mind.

A closer review of the data indicates that this calculation would be fruitless in any event, because the demand worksheets make no sense. They reflect that Verizon expects to bill for 167,240 amps per year, or 13,936 amps per month. In other words, Verizon anticipates that it will provision approximately 14,000 amps throughout its region in any given month. This figure is patently wrong, since Verizon also contends that it has fused over 2.2 million amps regionwide. Obviously, no thought was invested in preparing the demand forecast, and this is just another example of the slipshod nature of Verizon's analysis of DC power costs.

The CLECs also theorized that the utilization factor might be intended to account for the reduction in DC power demands by the ILEC when the CLEC transfers the ILEC's customers off the ILEC network. In the central office, the primary consumer of electrical power is the digital switch and associated hardware. However, collocating carriers generally do not deploy switching equipment in their collocation space. Quite the contrary, the ILECs have argued that switching equipment should not be allowed in collocation spaces and that collocating carriers should only put the absolute minimum amount of equipment necessary to interconnect with essential facilities. For this reason, as customers are transferred from the ILEC to a collocated carrier, the consumption of certain common components should logically decline. In addition to

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<sup>65</sup> *Direct Case Attachment 2, Tab A, Sub-tab 2, Workpaper 2-2; Attachment 2, Tab B, Sub-tab 1, Workpaper 1-3.*

the fact that collocating carriers locate their switching and ancillary equipment outside of the incumbent's central office, emerging carriers generally deploy the latest generation of hardware, which is typically more power efficient than the older equipment deployed in the incumbent's network. Consequently, as the existing customer base is transferred from the incumbent to interconnected competitive carriers, the total amount of power required in the central office should remain fairly stable, and may actually decline. At the very least, it is logical that the ILEC would be required to procure fewer capacity upgrades than would be indicated by the total consumption of power by interconnecting carriers.

The CLECs have found nothing to indicate that Verizon has factored this ILEC-to-CLEC customer migration into its collocation power cost support. Perhaps the DC power utilization factor is intended for this, but if so, it is obviously the wrong figure, since such a factor would be less than 1.

Unfortunately, this is all idle speculation because Verizon's unresponsive Direct Case fails to provide the level of detail necessary to support this type of analysis. The CLECs are ultimately left at a loss as to what the utilization factor means. However, it is obviously an important number, and the fact that it is unexplained is yet another reason why the Bureau must reject Verizon's filing.

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<sup>66</sup> *Direct Case* Exhibit A at 2.

**VII. VERIZON HAS FAILED TO JUSTIFY THE REASONABLENESS OF ITS CARRIER CERTIFICATION REQUIREMENT<sup>67</sup>**

The Bureau directed Verizon to justify why it requires each collocator annually to submit a written statement signed by a responsible officer attesting that it is not exceeding the load power ordered for each collocation arrangements. In addition, it directed Verizon to justify why it is reasonable to charge collocators for the total number of amps fused if such a statement is not submitted within 30 days.<sup>68</sup>

Verizon's response merely expounds on its concern that CLECs will draw power up to the fused limits of their feeds in an attempt to con Verizon out of more load amps than the CLECs have agreed to pay for. Verizon's concern, however, is based on faulty assumptions and seems to be more of a reflection of Verizon's worldview than the CLECs'. First, Verizon assumes that its CLEC customers would routinely run their networks without sufficient overload protection. In a fiercely competitive industry in which network downtime is the surest way to lose customers, it surely is not reasonable to suggest that any carrier would deliberately risk network failure. The costs of such a strategy so outweigh the benefits that it is ludicrous to even consider it.

Second, Verizon has offered no evidence regarding past abuses by CLECs that would indicate that it needs to create a certification scheme, complete with penalties for noncompliance. Actually, if any of the parties has been manipulating the system to take advantage of the other, it

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<sup>67</sup> NOTE: Network Plus does not sponsor this section VII of the Oppositions.

<sup>68</sup> *Designation Order* para. 61.

has been Verizon, with its past practice of overcharging collocators for “fused” amps instead of “load” amps, and its recent attempt to charge for non-tariffed services.<sup>69</sup>

Verizon has made no compelling arguments justifying why this requirement is justified, and it should be eliminated.

**VIII. IF, DESPITE THE FATAL WEAKNESSES IN VERIZON’S DIRECT CASE, THE COMMISSION ACCEPTS THE TARIFF REVISIONS, IT SHOULD REQUIRE VERIZON EITHER TO GRANDFATHER EXISTING COLLOCATION ARRANGEMENTS AT THE CURRENT MONTHLY RECURRING CHARGES FOR DC POWER OR TO REFUND 75% OF THE SPACE PREPARATION CHARGES.**

As set forth in the *Petition*, if Verizon’s proposed recurring rates in Transmittal 1373 are allowed to take effect, the Bureau should either (1) require Verizon to refund 75% of the space preparations charges paid under FCC 1 and 11 or (2) grandfather existing collocators at the current FCC 1 or 11 monthly rate for DC power. In the absence of these remedial measures, the proposed rate increases would unjustly and unreasonably result in a significant windfall to Verizon.

CLECs often ordered collocation from Verizon’s FCC tariffs, rather than its state tariffs, as part of a reasonable business decision to pay significantly higher up-front space preparation charges in exchange for significantly lower recurring DC power charges. The magnitude of the CLECs’ detrimental reliance on Verizon’s federal tariffs is substantial. For example, the *Petition* notes that a representative CLEC paid approximately \$6,786,000 in nonrecurring space preparation charges for 58 collocation spaces under Verizon’s FCC No. 11 tariff, as opposed to an estimated \$986,000 in comparable charges had the collocations been ordered pursuant to state

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<sup>69</sup> See section IX, *infra*.

tariffs.<sup>70</sup> Current FCC 1 and 11 Tariff customers have already paid, up-front, for a large portion of Verizon's investment and other costs of providing power provisioning to collocators. If Verizon's proposed rates are adopted without the relief requested herein, these CLECs will be forced, unjustly, to pay these costs again.

The most immediate and straightforward remedy to prevent an unjust windfall under Verizon's proposed rates would be to require Verizon to credit existing collocation customers with 75% of the space preparation charges that were paid under Tariff Nos. 1 and 11. This amount was calculated to reflect the additional nonrecurring charges paid by CLECs in comparison to the average state collocation tariff rates that were available to CLECs who did not choose to make an up-front investment in paying for their future power consumption.<sup>71</sup>

The proposed credit adjustment is within the Commission's authority and is consistent with past Commission practice. For example, the Commission has previously ordered ILECs to compensate existing DS3 customers who had paid high non-recurring charges and would, as a result of a proposed tariff change, face higher recurring charges. The Commission found that "in order to fairly recognize the fact that some ICB customers have made substantial 'up-front' payments, we direct the LECs to tariff a credit mechanism that will reflect such payments. In this way, any customer that has, in effect, 'bought-down' its monthly rate will be protected against being overcharged under the general rates."<sup>72</sup> The existing customers who have purchased collocation under Tariff Nos. 1 and 11 have likewise endeavored to "buy-down" their

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<sup>70</sup> *Petition* at 9.

<sup>71</sup> *See* note 55, *supra*.

<sup>72</sup> Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, *Memorandum Opinion and Order*, CC Docket No. 88-136, 4 FCC Rcd 8634 para. 79 (1989).

monthly collocation charges with an up-front investment. Verizon should not be permitted to abscond with these CLEC investment dollars and then proceed to re-recover its costs through increased recurring charges. Therefore, the Bureau should implement a credit mechanism by which Verizon would immediately credit existing Tariff Nos. 1 and 11 customers in an amount equal to 75% of the non-recurring space preparation charges paid under the tariff.

If the Bureau does not order Verizon to issue credits to existing customers, it could alternatively require Verizon to grandfather existing collocation customers at the current Tariff Nos. 1 and 11 monthly rates for DC power. As explained in the Petition and herein, existing customers detrimentally relied upon the trade-off offered by Verizon in Tariff Nos. 1 and 11 to obtain modest long-term DC power rates in exchange for an up-front payment of inordinately high installation charges. The Commission has previously established the protection of the reliance interest of existing customers as a rationale for grandfathering,<sup>73</sup> and the CLECs' significant reliance interests in this case are a proper basis for the Commission to require Verizon to continue to offer to existing customers a grandfathered DC power rate. Grandfathered status of existing Verizon Tariff Nos. 1 and 11 collocation customers will be essential to prevent Verizon from unjustly over-recovering its costs, if the proposed rates are approved without the 75% credit proposed herein.

If the Bureau orders a grandfathering of existing DC power rates, it should require Verizon to permit eligible CLECs to request in the future reasonable modifications to their existing collocation arrangements without losing their grandfathered status at these locations. If

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<sup>73</sup> See, e.g., *Competition in the Interstate Interexchange Marketplace, Memorandum Opinion and Order On Reconsideration*, CC Docket No. 90-132, 7 FCC Rcd 2677 para. 14 (1992).

grandfathering is to provide any meaningful protection from the over-recovery that would otherwise result, it must be established in a manner that will still enable CLECs to make full use of their collocation sites by having the ability to modify the sites to adapt to changing market conditions. The Commission has previously found that it is necessary to provide this type of flexibility to customers of grandfathered services so that customers would be able to modify their service arrangement to keep up with changes in their business, and should do so again here.<sup>74</sup>

**IX. VERIZON'S RECENT COLLOCATION TARIFF REVISIONS ARE PART OF A PATTERN OF TARIFFING ABUSE THAT MUST BE STOPPED**

Unfortunately, the need for Commission action against Verizon's unlawful tariffing practices is even more acute than when CLECs petitioned to reject or suspend Verizon's federal collocation tariffs. Even as the Commission investigates these tariffs, Verizon is attempting another scheme to shake-down CLECs for Verizon's anticipated collocation revenue shortfalls. Since the Petition was filed, Verizon has sent correspondence to many, if not all, of its FCC collocation tariff customers, notifying them of Verizon's unilateral determination that they will be subject to voice grade cabling and termination charges assessed at state tariff rates on both a retroactive and going forward basis. Verizon has told collocators to expect backbills for non-recurring and recurring charges totaling millions of dollars for collocation arrangements constructed up to more than *three years ago*. Verizon's whipsaw approach is obvious. It files federal tariff revisions, while at the same time attempting to unlawfully assess charges that do not appear in those tariffs at all, hoping to sneak through unsubstantiated higher charges one way or another. Although Verizon prohibits its collocators from mixing and matching rates from

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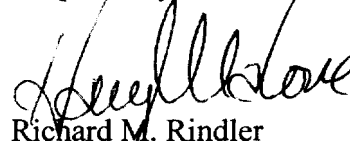
<sup>74</sup> *Id.* paras. 4, 31.

state and federal tariffs, it apparently believes that it is not subject to any such prohibition in assessing charges to its collocators.

**X. CONCLUSION**

Verizon's Direct Case is substantially nonresponsive and fails to meet the burden of proof. By its recalcitrance, Verizon is daring the Bureau to reject its tariff revisions. The Bureau should oblige Verizon. In the face of a statutory deadline, the Bureau has no choice but to reject the proposed tariff revisions outright.

Respectfully submitted,



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Dated: July 31, 2001

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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Oppositions to Direct Case; CC Docket No. 01-140, were served via First-Class Mail, U.S. postage prepaid, to the persons listed below:

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